

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE

MILLER, PAUL ALAN,

Debtor.

DECISION

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Case No. 99-00467

MEMORANDUM OF

and ORDER

Jon R. Wilson, Boise, Idaho, for Debtor.

Gary L. McClendon, Office of the U.S. Trustee, Boise, Idaho.

Lois K. Murphy, Boise, Idaho, chapter 7 Trustee.

This matter comes before the Court upon the motion of the Trustee for an order requiring turnover of the above Debtor's 1998 federal income tax refunds in the amount of \$3,454.00.

BACKGROUND

The Trustee, U.S. Trustee and counsel for the Debtor appeared at a hearing on the motion held May 20, 1999. Following argument, the motion

was taken under advisement subject to submission of briefing by the Debtor within 15 days (the U.S. Trustee having already filed a brief in support of the Trustee's motion the day prior to hearing). As of the date of this Decision and Order, no briefing or other submission has been made by the Debtor.

DISCUSSION

The Debtor filed his voluntary chapter 7 petition for relief on March 2, 1999. The Debtor is currently married, but his spouse did not join in the bankruptcy petition. The Debtor and his spouse were married in April 1997.

The Debtor's 1998 income tax refunds are property of the estate. *See* § 541(a)(1), (a)(2). The Debtor is under an absolute obligation to deliver all property of the estate to the Trustee. § 521(4). In addition to this unambiguous Code requirement of turnover, the Court issued here, as it does in all chapter 7 cases, an "Income Tax Turnover Order" requiring the Debtor to deliver to the Trustee both photocopies of the prior year's tax returns and all tax refunds.

The Debtor resists the Trustee's attempts to enforce this Order and the underlying Code provisions. His counsel argued at hearing that, because only a few of the debts listed in this bankruptcy are "community debts" of the Debtor and his wife, it would be "fair and equitable" to allow the non-debtor spouse to keep one-half of the subject tax refund.

However equity, whether invoked under § 105 of the Code or otherwise, may not be used in circumvention of express provisions of the Code. *In re American Hardwoods, Inc.*, 885 F.2d 621, 625 (9th Cir. 1989); *In re Dugger*, 99.1 I.B.C.R. 30, 31 (Bankr.D. Idaho 1999) (*citing Gurney v. State of Arizona Department of Revenue (In re Gurney)*, 192 B.R. 529, 537 (9th Cir. BAP 1996)). The Debtor's generalized appeal to equity cannot supersede the clear requirements of §§ 521(4) and 541(a).

Section 541(a)(2) brings into the estate all interests of a debtor and that debtor's spouse in community property as of the commencement of the case, if that property is under the sole, equal or joint management and control of the debtor. *See* § 541(a)(2)(A). Pursuant to Idaho Code § 33-912, either the husband or wife has the right to manage and control community property. Inasmuch as no factual contest has been made as to the character of the tax refund as community property, § 541(a)(2)(A) controls and the refunds are property of the estate. They must therefore be delivered to the Trustee by virtue of § 521(4). The Debtor has not persuaded the Court that the number or character of creditor claims as either community or separate obligations

somehow impacts the issue of whether or not the refunds are community property.¹

As noted above, the Debtor was given an opportunity following hearing to provide legal authority to substantiate the argument that the tax refund is something other than property of the estate, or that some established principal of law supports the contentions his counsel made and insulates some portion of this property of the estate from administration by the Trustee. The Debtor has submitted no such authority, and has failed to establish a factual or legal defense to the Trustee's request.

ORDER

Based upon the foregoing, the Trustee's motion for turnover of the 1998 tax refunds is GRANTED.

Dated this 23rd day of July, 1999.

TERRY L. MYERS
UNITED STATES BANKRUPTCY JUDGE

¹ The Court has reviewed the case of *First Idaho Corporation v. Davis*, 867 F.2d 1241 (9th Cir. 1989), referred to by Debtor's counsel in oral argument, and finds the same inapplicable to the issues presented here.